

Respondent argues the ALJ exceeded his jurisdiction when he issued independent rulings regarding evidentiary matters rather than incorporating those rulings into the Award. Respondent also argues that the ALJ erroneously found exhibits 3, 6, 7 and 8 to Dr. Prostic's deposition and exhibit 3 to Dr. Sankoorikal's deposition to be inadmissible.

Respondent asserts those exhibits were admissible because they were relied upon by Drs. Prostic and Sankoorikal in rendering their respective opinions.

Claimant contends the ALJ correctly found the listed exhibits inadmissible, arguing that Drs. Prostic and Sankoorikal did not rely on those exhibits in rendering their respective opinions.

The issues for the Board's review are:

(1) Did the ALJ exceed his jurisdiction by entering an order ruling on the objections to the admissions of exhibits instead of incorporating any such evidentiary rulings into the Award?

(2) Did the ALJ err in sustaining certain objections and excluding certain evidence from the record?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In these four workers compensation claims, the evidentiary deposition of Dr. Edward Prostic was taken on behalf of respondent and the evidentiary deposition of Dr. Joseph Sankoorikal was taken on behalf of claimant. In each deposition, claimant's attorney made objections to exhibits entered by respondent's attorney. On July 9, 2012, after the cases had been submitted to the ALJ for consideration but before the entry of Awards in any of the cases, the ALJ entered an order ruling on the objections.

The ALJ's July 9, 2012, Order does not award claimant medical treatment, temporary total disability compensation or any other form of preliminary benefits. The ALJ made no findings concerning compensability. The Order merely ruled on evidentiary objections made during certain evidentiary depositions concerning the admissibility of certain exhibits. The ALJ's Order is neither a preliminary hearing order entered pursuant to K.S.A. 2011 Supp. 44-534a, nor is it a final award. The Board has previously held on numerous occasions that interlocutory orders are generally not subject to interlocutory appeal.¹ K.S.A. 2011 Supp. 44-551(i)(1) limits the Board's jurisdiction to review "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge" The ALJ's Order is interlocutory in nature.

Respondent's request for Board review of the ALJ's Order is premature. The Order is not a final order that can be reviewed at this stage of the proceedings pursuant to K.S.A.

¹ See, e.g., *Ellis v. T Mobile USA, Inc.*, Docket No. 1,010,151, 2003 WL 22150567 (Kan. WCAB Aug. 14, 2003); *Scott v. Total Interiors*, No. 244,761, 2000 WL 1134444 (Kan. WCAB July 28, 2000); *Kitchen v. Luce Press Clippings, Inc.*, No. 228,213, 1999 WL 288895 (Kan. WCAB Apr. 2, 1999); see also *Johnson v. Siding Supply, Inc.*, Docket Nos. 211,043 & 220,243, 1998 WL 381540 (Kan. WCAB June 29, 1998).

2011 Supp. 44-551. That statute limits the Board's jurisdiction to review of "final orders." It does not grant authority to review interlocutory orders. Furthermore, the Order does not decide an issue that came before the ALJ pursuant to the preliminary hearing statute, K.S.A. 2011 Supp. 44-534a, as preliminary hearing orders are limited to issues concerning the furnishing of medical treatment, the payment of temporary total disability compensation, or the payment of temporary partial disability compensation.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.² The Board is without jurisdiction to review the July 9, 2012, Order of the ALJ until the time of final award.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that respondent's appeal from the Order of Administrative Law Judge Brad E. Avery dated July 9, 2012, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of September, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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² See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).